

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

APR 16 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Amendment of Part 1 of the ) WT Docket No. 97-82  
Commission's Rules - )  
Competitive Bidding Proceeding )  
 )

To: The Commission

**Reply Comments of Ericsson Inc.**

Ericsson Inc. ("Ericsson"), by its attorney, respectfully submits its reply comments in the NPRM portion of the above-captioned proceeding.<sup>1</sup> In support of its reply comments, Ericsson states the following.

Ericsson is a manufacturer of telecommunications equipment and systems for CMRS and PMRS licensees. Ericsson has been active in developing wireless equipment and systems for radio services in which licenses have been, or have been proposed to be, allocated on the basis of competitive bidding techniques. Ericsson has also been active in providing vendor financing for numerous CMRS licensees, including licensees who qualify under various Commission rules as small businesses or entrepreneurs, and have thereby been eligible to take advantage of incentives in the competitive bidding process to ensure their active participation in the development of new wireless telecommunications services.

<sup>1</sup> Amendment of Part 1 of the Commission's Rules - Competitive Bidding Proceeding, Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking, WT Docket No. 97-82, FCC 97-60, \_\_ Rcd \_\_ (released February 28, 1997) (hereinafter "NPRM").

*028*

As a result of its experience in the marketplace, Ericsson submits its reply comments for Commission consideration.

At the outset, Ericsson commends the Commission's efforts to create incentives for small businesses and entrepreneurs to be able to effectively participate in the provision of wireless services. Ericsson generally supports rules which provide certain classes of applicants with bidding credits and the ability to pay for their winning bids over time. However, Ericsson agrees with numerous parties filing comments in the NPRM that certain modifications should be made to the auction rules so eligible small businesses and entrepreneurs can obtain the financing that is so critical in today's competitive marketplace.

Ericsson's reply comments will be limited to two areas of specific concern. First, Ericsson will discuss the attribution/control group rules. Second, Ericsson will discuss the unjust enrichment rules.

#### **Attribution/Control Group Rules**

Ericsson supports the comments of Pocket Communications, Inc. ("Pocket") and The Coalition of Institutional Investors ("Coalition") both of whom argued that the Commission should eliminate the current "control group" rules and substitute instead a "controlling interest test."<sup>2</sup> Use of the significantly less complex controlling interest test will provide small business entities and entrepreneurs with substantially more flexibility in the financing of their licenses, especially in a market which is characterized by increased

---

<sup>2</sup> NPRM, para. 28. See also, *Joint Comments of the Coalition of Institutional Investors*, pp. 7-9 and *Comments of Pocket Communications, Inc.*, pp. 2-3.

competition (1) from numerous other service providers and (2) for the necessary capital to build and operate wireless systems.

From a public policy standpoint allowing small business entities and entrepreneurs to use the controlling interest test will not adversely affect the Commission's goal of ensuring that small business entities and entrepreneurs obtain the benefits of participating in new wireless services. At the same time, it will allow small businesses and entrepreneurs to attract the necessary capital to finance their licenses. Maintaining the existing, rigid control group structure rules greatly increases the complexity of financial transactions and unnecessarily increases the chances that financing is more costly to obtain. Indeed, the current control group structure rules increases the chances that financing for some systems may not be obtained at all.

Ericsson also agrees with the comments submitted by Pocket and the Coalition which express the view that the Commission's proposal to use the controlling interest test should be made expressly applicable to C block broadband PCS licensees and F block broadband PCS applicants. Despite the fact that C block broadband PCS licenses have been issued and F block long form applications have been submitted to the Commission, the financing of C and F block licensees is still an active, ongoing process. In fact, at this point in time, most C block PCS licensees have not yet commenced service and are engaged in the process of arranging financing. Commission application of the proposed controlling interest test for both C and F block broadband PCS licensees/applicants will help to ensure that these entities obtain the financing they so critically need.

## **Unjust Enrichment Rules**

Ericsson agrees with Pocket and others who argued that the Commission should modify the unjust enrichment rules to make it easier for licensees to assign or transfer licenses by reducing the “unjust enrichment” penalty imposed on the transfer of a license. In the NPRM the Commission asked for specific comment on whether it “...should adopt a scale of decreasing liability based on the number of years a license is held as we have done for other services.”<sup>3</sup> Ericsson agrees that a sliding scale should be adopted to phase out unjust enrichment penalties associated with licenses that are able to take advantage of financial incentives. As noted by Pocket, during the latter years of an initial license the benefit of installment payments and bidding credits will have inured to the benefit of the licensee whereas in the earlier stages of the initial license grant, the same might not be true.<sup>4</sup>

There are a number of ways the Commission could choose to implement a reduction in unjust enrichment payments. For example, in the auction rules for MDS licenses under Part 21; Narrowband PCS licenses under Part 24; General Wireless Communications Service licenses under Part 26; Wireless Communications Service licenses under Part 27 and 900 MHz SMR licenses under Part 90, the Commission adopted rules which reduces the amount of unjust enrichment penalty depending on the amount of time the initial license has been held. Though Ericsson takes no substantive position on which sliding scale should be used, it does assert that a specific rule should be

---

<sup>3</sup> NPRM, para. 43.

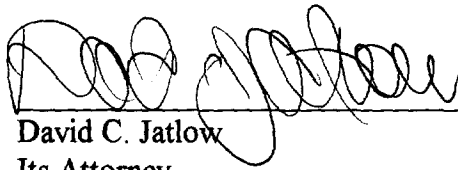
<sup>4</sup> Pocket Comments, p. 6.

adopted so licensees in auctionable services know they are obligated to pay unjust enrichment penalties only during the initial license term.

In addition, Ericsson submits that any rules adopted on this issue in this proceeding should also be made applicable to C block broadband PCS licensees and F block broadband PCS applicants. This will provide C and F block entities with two benefits. First, the financial community will be more likely to finance C and F block licenses due to the fact that a less severe unjust enrichment payment scheme is in place. Second, it will provide C and F block licensees with more flexibility to assign or transfer licenses in the event market conditions change thus helping to ensure that service to the public is not disrupted. Moreover, since C block licensees are still in the first year of their initial license terms and F block licenses have not yet been issued, there is ample time for these entities to take advantage of the proposed rules.

Respectfully submitted,

Ericsson Inc.



David C. Jatlow  
Its Attorney

Young & Jatlow  
Suite 600  
2300 N Street, N.W.  
Washington, D.C.  
(202) 663-9080

April 16, 1997

CERTIFICATE OF SERVICE

I, Lisa M. Volpe, hereby certify that I have this 16<sup>th</sup> day of April, 1997, caused copies of the foregoing to be served by United States mail, first class to the following:

Stephen E. Holsten  
Gurman, Blask & Freedman, Chtd.  
1400 Sixteenth Street, N.W.  
Suite 500  
Washington, DC 20036  
Counsel for Western Wireless  
Corporation

Katherine M. Holden  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, DC 20006  
Counsel for PCIA

Robert L. Hoggarth  
Personal Communications Industry  
Association  
500 Montgomery Street, Suite 700  
Alexandria, VA 22314

Paul G. Madison  
Kelley Drye & Warren LLP  
1200 - 19<sup>th</sup> Street, N.W.  
Suite 500  
Washington, DC 20036  
Counsel for Paging Network, Inc.

Robert S. Foosaner  
Nextel Communications, Inc.  
800 Connecticut Ave., N.W.  
Suite 1001  
Washington, DC 20006

David Cosson  
National Telephone Cooperative  
Association  
2626 Pennsylvania Ave., N.W.  
Washington, DC 20037

Theresa A. Zeterberg  
Cole, Raywid & Braverman, LLP  
1919 Pennsylvania Ave., N.W.  
Suite 200  
Washington, DC 20006  
Counsel for Mountain Solutions Ltr.,  
Inc.

Frederick M. Joyce  
Joyce & Jacobs, Attorneys at Law, LLP  
1019 19<sup>th</sup> Street, N.W.  
Fourteenth Floor -PH2  
Washington, DC 20036  
Counsel for Metrocall, Inc.

Caressa D. Bennet  
Bennet & Bennet, PLLC  
1019 29<sup>th</sup> St., N.W.  
Suite 500  
Washington, DC 20036  
Counsel for Merlin Telecom, Inc.

Susan E. McNeil  
Latham & Watkins  
1001 Pennsylvania Ave., N.W.  
Washington, DC 20004-2505  
Counsel for Hughes Electronics  
Corporation

Wendy C. Chow  
Cellular Telecommunications Industry  
Association  
1250 Connecticut Ave., N.W.  
Suite 200  
Washington, DC 20036

Alan R. Shark  
American Mobile Telecommunications  
Association, Inc.  
1150 18<sup>th</sup> Street, N.W., Suite 250  
Washington, DC 20036

Elizabeth R. Sachs  
Lukas, McGowan, Nace & Gutierrez  
1111 19<sup>th</sup> Street, N.W., 12<sup>th</sup> Floor  
Washington, DC 20036  
Counsel for American Mobile  
Telecommunications Association, Inc.

John A. Prendergast  
Blooston, Mordkofsky, Jackson &  
Dickens  
2120 L Street, N.W., Suite 300  
Washington, DC 20037  
Counsel for The American Mobile  
Association, The Alarm Industry  
Communications Committee

Mark A. Stachiw  
AirTouch Paging  
Three Forest Plaza  
12221 Merit Drive, Suite 800  
Dallas, TX 75251

Christine M. Crowe  
Paul, Hastings, Janofsky & Walker LLP  
1299 Pennsylvania Ave., N.W.  
Tenth Floor  
Washington, DC 20004  
Counsel for AirTouch Paging and  
Powerpage, Inc.

Cathleen A. Massey  
AT&T Wireless Services, Inc.  
1150 Connecticut Ave., N.W., 4<sup>th</sup> Floor  
Washington, DC 20036

Howard J. Symons  
Mintz, Levin, Cohn, Ferris, Glovsky &  
Popeo, P.C.  
701 Pennsylvania Avenue, N.W.  
Suite 900  
Washington, DC 20004  
Counsel for AT&T Wireless Services,  
Inc.

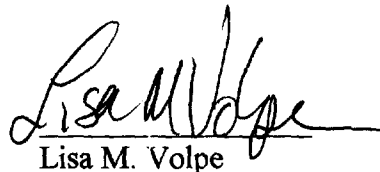
Mary E. Brooner  
Motorola, Inc.  
1350 I Street, N.W.  
Washington, DC 20005

Lynn R. Charyton  
Wilmer, Cutler & Pickering  
2445 M Street, N.W.  
Washington, DC 20037  
Counsel for Pocket Communications,  
Inc.

J. Jeffrey Craven  
Patton Boggs, LLP  
2550 M Street, N.W., Suite 800  
Washington, DC 20037  
Counsel for Airadigm

Joe D. Edge  
Drinker Biddle & Reath  
901 15<sup>th</sup> Street, N.W., Suite 900  
Washington, DC 20005-2503  
Counsel for Cook Inlet Region, Inc.

Carl W. Northrop  
Paul, Hastings, Janofsky & Walker LLP  
1299 Pennsylvania Ave., N.W.  
Tenth Floor  
Washington, DC 20004-2400  
Counsel for The Coalition of  
Institutional Investors

  
Lisa M. Volpe